(18)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J

Criminal Appeal No. 774/2005

Rajendra Singh & Others

Vs.

State of Chhattisgarh

Post for orders today.

Sd-/
Dilip Raosaheb Deshmukh
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.774/2005

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J. –

Rajendra Singh & Others.

Versus

State of Chhattisgarh

Shri Bhupendra Singh, Counsel for the appellant.

Shri Ashish Shukla, G.A./Addl. Public Prosecutor for the State.

JUDGMENT

(Passed on 13th of February, 2006)

This appeal is directed against the judgment dated 15.9.2005 delivered by Shri S. Tiwari, Speical Judge, Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act Bastar, Jagdalpur in sessions case No.14/2005 whereby the appellants were convicted under Section 352, 294 and 506 of the I.P.C. and were sentenced to pay fine of Rs. 500/-, Rs. 500/- and Rs. 1,000/- respectively and in default of payment of fine to undergo simple imprisonment for 15 days, 15 days and one month respectively.

2. Briefly stated the prosecution is that on 28.11.2004, a Government cheque for Rs. 7,935/- had been received in the Gram Panchayat, Garenga for the drought relief. Ganeshram Baghel P.W. 7 was the Surpanch, appellant Tankeshwar was the Up-Surpanch and appellant Rajendra Singh was the Secretary of the Gram Panchayat. All the appellants and Ganeshram were present in Gram Panchayat Bhawan. A quarrel took place regarding the cheque received for drought relief. The appellants hurled filthy abuses. The appellant

filthily abused Ganeshram by calling "*मादरचोद आदिवासी*" and threatening to kill him, voluntarily caused simple hurt to him. F.I.R. was lodged at 6.15 p.m. on 28.11.2004 by Ganeshram vide Ex.P-3. Dr. Mamta Shende P.W. 5 examined Ganeshram on 29.11.2004, but did not find any external injury on his person. She only mentioned that Ganeshram complained of pain over chest and neck. After completion of investigation, the appellants were prosecuted under Section 3 (1) (10) of Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act) and Sections 506 Part-II, 294 and 323 of the I.P.C. The appellants abjured the guilt. The prosecution examined as many as 7 witnesses. The appellants pleaded false implication in defence and examined 5 witnesses. The trial Judge, relying upon the evidence led by the prosecution convicted the appellants only under Section 506 Part-I, 294 and 352 of I.P.C. and sentenced the appellants as aforesaid in para 1. The appellants were acquitted of the charge under Section 3 (1) (10) of the Act. The charge under Section 506 Part II of I.P.C. was also found to be not established.

3. Shri Bhupendra Singh, learned counsel appearing for the appellants has argued that the evidence led by the prosecution does not establish the guilt of the appellants under Section 506 Part-II, 294 and 352 of I.P.C. beyond doubt. He also contended that in para 5 of the testimony of Ganeshram P.W. 7 there was a clear admission that there was a dispute going on with the appellant Tankeshwar and an enquiry was being conducted against him for the works done by him as Surpanch on the complaint of *Up*-Surpanch. Lastly, he contended that the evidence led by the defence was totally overlooked by the

trial Judge. On the other hand, Shri Ashish Shukla, learned Govt. Advocate argued in support of the impugned judgment.

4. Having heard the rival contentions, I have minutely perused the record of Sessions Case No. 14/2005. Ganeshram P.W. 7 has in para 5 stated as follows:

"यह कहना सही है कि मेरे सरपंच कार्यकाल के दौरान किए गये कार्यों के खिलाफ दो–तीन जांच चल रही है। यह कहना सही है कि उक्त सभी जांच तत्कालिन उपसरपंच टंकेश्वर की शिकायत पर मेरे खिलाफ चल रही है। उपसरपंच टंकेश्वर के द्वारा की गई मेरे खिलाफ शिकायत पर जांच चलने पर दैनिक समाचार पत्र हाईवे चैनल में दिनांक –13.10.04 को यदि छपी हो तो मुझे नही मालूम। अभियुक्त ने मेरे खिलाफ शिकायत की वह झूठी थी, इसलिये मुझे खराब लगा था।'

Head Constable Atmaram Rathore D.W. 1 has also proved the written complaint dated 28.11.2004 lodged by the appellants against Ganeshram. This clearly shows that the relations between Ganeshram and the appellants were very much strained and enmical. Dr. Mamta Shende P.W. 5 has also been examined by the prosecution who did not find any mark of injury on the person of Ganeshram. This is also a material fact to be borne in mind while appreciating the evidence in the backdrop of strange relationship and enmical terms between the appellants and Ganeshram P.W. 7.

5. The evidence led by the prosecution for proving the offence under Section 294 of I.P.C. is highly contradictory. Narendra Kashyap P.W. 2 has stated that all the appellants had merely saide ***"मुरिया साले सरपंच हो गया है, तेरे को देख लेंगे"*** Dharamlal stated that upon hearing noise when he came out of house, he found that there was some discussion going on between the appellants and Surpanch Ganeshram. But, he did not state that the appellants hurled any

abuses to Ganeshram. Bhagatnath P.W. 1 deposed that only Rajendra Singh had abused Surpanch Ganeshram by calling him "*मादरचोद, आदिवासी, मतरा*". His testimony does not disclose that the appellants Damodar and Tankeshwar hurled any abuses to Ganeshram. Now coming to the testimony of Ganeshram P.W. 7, it is pertinent to note that in his examination-in-chief, he stated that Rajendra Singh had called the teachers present in Panchayat Bhavan as "*मादरचोद आदिवासी* ". He also stated that only Rajendra Singh had also abused him and said "*मतरा मादरचोद*". He did not state that the words uttered by appellant Rajendra caused annoyance to him, which is a necessary ingredient of Section 294 I.P.C. It is thus, clear that the evidence led by the prosecution is highly contradictory. It is common experience that such abuses are mere expression of anger and are commonly used while abusing one another during a quarrel in villages and lack obscenity.

6. So far as the offence under Section 506 part I is concerned, in the F.I.R. lodged by Ganeshram Baghel, no such allegation was made by him that the appellants had given any threat to him. The testimony of Bhagatnath Kannoje P.W. 1, Narendra Kashyap P.W. 2, Dharamlal Nage P.W. 3 does not show that the appellants had intimidated Ganeshram. The testimony of Ganeshram P.W. 7 that the appellants had pressed him against the wall is not corroborated by any other witness or even Dr. Mamta Shende P.W. 5. Ganeshram P.W. 7 did not say that any force was applied by any of the appellants either on his neck or on his chest. The absence of any injuries on Ganeshram also renders his testimony doubtful. The trial Court has also clearly failed to appreciate the evidence led by the defence to show that on the day of

occurrence, Ganeshram had assaulted the appellants in Panchayat Bhavan under the influence of liquor.

7. The appellants were charged under Section 323 I.P.C. However, that charge was not found to be established against the appellants. In para 11 of the judgment, the trial Court has held that no obvious injury was caused to Ganeshram P.W. 7 and therefore, the charge under Section 323 I.P.C. was not established against the appellants. The testimony of Ganeshram P.W. 7 that the appellants had held him and pushed him back to the wall is not corroborated by Bhagatnath Kannoje P.W. 1, Narendra Kashyap P.W. 2 and Dharamlal Nage P.W. 3 as mentioned earlier. The possibility of false implication due to previous enmity cannot be ruled out. The evidence led by the appellants in defence also shows the existence of such possibility. Therefore, in view of the facts and circumstances of the case, the appellants could not be held guilty under Section 352 I.P.C.

8. From the foregoing discussion, the following facts emerge:-

i) Complainant Ganeshram had previous enmity with the appellants since on complaint made by the appellant Tankeshwar, an enquiry was being conducted against him.

ii) Tankeshwar had lodged a report against Ganeshram regarding an assault on the appellants under the influence of liquor on the same day.

iii) No external injury was found on the person of Ganeshram by Dr. Mamta Shende P.W. 5.

iv) The evidence led by the prosecution relating to offences under Section 294, 506 Part-I and 352 of I.P.C. is highly contradictory.

(v) The possibility that the appellants were falsely implicated could not be ruled out.

9. Upon a careful consideration of the evidence led by the prosecution and the defence, I am of the considered opinion that the guilt under section 352, 294 and 506 of I.P.C. is not established against the appellants beyond reasonable doubt.

10. In the result, the appeal is allowed. The conviction of the appellants under Section 352, 506 Part-I and 294 of I.P.C. and the sentences awarded there under are set aside. The appellants are acquitted. Fine paid, if any, shall be refunded to the appellants.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Priya